IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8616 of 2004

Dundappa Chandgonda Patil ..Petitioner

V/s

Maruti Krishna Kaloje and Ors..Respondent

Shri V.S.Kotikkar for Petitioner

Shri Amit B. Borkar for Respondent no.1

CORAM:S.R.SATHE,J.

DATED:29th Oct.2004

P.C.:-

. With consent of both the parties heard finally.

. The petition is filed by the original judgment debtor in execution proceedings NO.40 of 1996 challenging the order passed by the Civil Judge, S.D., Gadhinglaj below Exh.86 whereby the application filed by the decree holder seeking police aid was granted. Brief facts relevant for the decision of this petition are as under :

. On the execution application filed by the

decree holder , judgment debtor was directed to hand over possession of the suit property. Accordingly when the Bailiff went to hand over possession of the suit property to the decree holder, on behalf of J.Ds their women abused, threatened and obstructed the bailiff therefore made a report to that effect whereupon the decree holder filed an application Exh.86 wherein it was categorically stated that judgment debtor's women obstructed the bailiff and as such police aid be provided. Specific prayer was also made for providing lady constable. On this application, after hearing both the learned Advocates the Executing court came to the conclusion that though the judgment debtor had submitted that it was necessary to issue notice to Smt.Ratnava who had obstructed the possession, the application filed by Smt.Ratnava for impleading was already dismissed and there was no necessity to issue any fresh notice to Smt.Ratnava as contended by J.D.. The Court, therefore, allowed the application Exh.86 filed by D.H. and granted police aid to decree holder.

. It it this order that has been challenged in this writ petition by judgment debtor. The learned advocate for the judgment debtor submitted that it was necessary for the Court to issue court notice to Smt.Ratnava as the obstruction was made

by her and in absence of any such notice and determining the issue as per provisions of Order 21 Rule 101 of Civil Procedure Code, no further order can be passed.

. Firstly, it has to be mentioned that in the Bailiff's report it is not mentioned that there was obstruction by Smt.Ratnava. On the contrary it was specifically mentioned that the obstruction was made by some woman of judgment debtor. So in the eyes of law that was in fact obstruction by the judgment debtor. When arguments was advanced on behalf of the judgment debtor that it was necessary to issue notice to Smt.Ratnava J.D. is presuming that the application which was filed by the decree holder was under Order 21 Rule 97 of C.P.C.. In fact, from the material on record it appears that it was not an application under Rule 21 Rule 97 but the police aid was asked to remove the obstruction of Judgment debtor's woman. Moreover, the question arises whether the present Petitioner viz. Judgment debtor is having any locus standi to challenge the above mentioned order. The very fact that Smt.Ratnava who according to J.D. had obstructed the bailiff has not challenged the order of police aid but the J.D. is challenging the said order shows that Ratnava is obstructing on behalf of J.D. all contentions of J.D. have already been negatived

and possession warrant was issued. So, J.D. has in fact no locus standi to file the present petition. So far as Smt.Ratnava is concerned, it must be noted that her earlier application below Exh.62 is already dismissed by the Court and admittedly she has not challenged the said order in superior court, so that order has become final. Having regard to all these aspects the order passed by the Executing Court appears to be legal and correct. There is no necessity to interfere with the same by exercising powers under writ jurisdiction of this Court.

. Hence the petition is dismissed.

. Parties to act on the copy of this order duly authenticated by Sheristedar of the Court.

(S.R.SATHE,J)